

## Advocating for Special Education Needs: *Best Practices to Support Children in a Time of Crisis* Questions & Answers

### Assessments

**Q1:** *What is a school district's responsibility to complete the assessment if a student was mid-assessment process pre-COVID-19 school closure?*

**A:** A 60-calendar day timeline for the district to complete the assessments and review the results at an IEP meeting was triggered if a parent or education rights holder signed an assessment plan agreeing to the district's proposed assessments and returned it to the school. This right is guaranteed under federal and state law and has not been waived. A district still has a duty to complete the assessment and review the results at an IEP team meeting within the 60-day timeline.

**Q2:** *How can assessments be conducted using evidence-based techniques virtually if assessments are required to be completed within the legal timeline?*

**A:** Assessments must be both valid and reliable. Validity is the ability of the test to measure what intends to be tested. Reliability means the test will yield consistent results. Both of these can be compromised unless your assessor knows how testing in a virtual setting affects validity and reliability. Assessment tools, protocols, and methods must be employed to guarantee that the virtual setting itself does not change what is being tested (validity) or yield different results than would be achieved in a normal clinical setting or classroom environment (reliability). Assessment protocols lay out the circumstances in which assessments must be administered, such as in a quiet environment without distractions.

An assessor (working with a caregiver) must be able to create these circumstances in a virtual testing environment in order for the results to be valid. Some tools allow for an assessor to ask questions and a child to answer them verbally. These types of tests might be appropriately given in a virtual testing situation. Other tests or interview protocols already allow for telephonic or other remote communications. Some types of tests may require in-person observations (e.g., behavioral needs of a student in a classroom setting), hands on manipulation (e.g., physical therapy assessment methods), or paper and pencil testing which cannot reasonably be recreated with an assessor working with an adult and a child in a remote location; these types of tools may not be valid or reliable in a virtual setting. Assessors must use their professional judgement and training to complete comprehensive assessments reliably and validly, to the extent possible during physical school closures, and review those results within the 60 calendar day timeline with an IEP team. If components of the assessment (e.g., certain tests) cannot be reliably and validly completed, the IEP team should discuss which components of the assessment have not yet been completed and create a plan for their completion once conditions change. This does not mean that a single test can be split over multiple testing days as this is not allowed for in many test protocols but that some components of an entire assessment (e.g., parent interview) may be completed while other components (e.g., cognitive testing) may have to wait until a complete test can be administered in-person at a later time.

**Q3:** *Are districts required to initiate new assessments during school closures?*

**A:** The answer depends on the type of assessment. Under normal circumstances, when a parent/education rights holder requests an assessment for their child, they have a right to receive a written response to that request within 15 calendar days, with the district either: (1) agreeing to the assessment and providing an assessment plan for the parent/education rights holder to sign, or (2) refusing to do the assessment in writing, including what information and records the district relied upon to find that the

requested area(s) of assessment is not an area of suspected disability. California Senate Bill 117 (Chapter 3, Statutes of 2020) created a temporary halt to this timeline. This means that if a new assessment is requested during a period of physical school closure, such as what is taking place in most districts across the state currently, a school district does not have to respond to this request within 15 calendar days (and thus not start the assessment process), although it may still choose to do so.

In other circumstances, assessments must still be completed during physical school closures. For example, if an assessment plan was signed by a parent/education rights holder and returned to the district prior to physical school closures (see question 1 above for more detailed information), the 60-day timeline does apply. Assessments must also be completed for triennial IEPs, due every three years. Triennial assessments must include assessments for the child in all their unique areas of need. Some IEPs include a place where a parent can waive their right to triennial assessments for the following year. If you have previously waived this right, you may go back and inform the district (in writing) that you no longer wish to waive it, and they will not be relieved of their duty to conduct the assessment.

Finally, if a child is aging out of early intervention services, provided by regional centers in California, into school district services, assessments must be completed and an IEP put in place by a child's third birthday. Currently, federal and state laws require this timeline be followed. US Department of Education Secretary DeVos recommended to Congress on April 27, 2020 that this timeline be waived and that children continue to receive early intervention services through regional centers until such time as their school district assessments could be completed face to face. As of May 2, 2020, Congress has not acted on this recommendation.

**Q4:** *Do children have a right to be assessed for disabilities created by or during the COVID-19 pandemic?*

**A:** Yes, every child with a disability that impacts their ability to access their education, regardless of the cause, has a right to receive special education services from their school district. Potential disabilities created by or during the pandemic might include, but are not limited to, physical disabilities caused by COVID-19 infections (e.g., respiratory ailments) or emotional disabilities caused by economic hardships or social distancing requirements (e.g., anxiety, depression). School districts have a duty to seek out and find, assess, and serve all children with disabilities living within their residence boundaries. This is especially true if parents/education rights holders/caregivers are reporting such concerns to school staff such as teachers or counselors. SB 117 limits a district's duty to timely respond to a parent's request for an assessment (see question 2 above for more information).

#### **Individualized Education Programs (IEPs)**

**Q5:** *Do distance learning IEPs have to be completed for all children with disabilities?*

**A:** If a child is receiving ALL of their IEP services, a distance learning IEP does not need to be held solely to document that in-person services are now being provided virtually. If any of a child's IEP services are not being provided, a distance learning IEP should be convened to discuss which services a child needs during physical school closures in order to access their education on par with their peers and to identify how those services can be reasonably provided. Typically, this would be an amendment IEP.

**Q6:** *Do other types of IEPs need to be held during physical school closures caused by COVID-19?*

**A:** Yes, Annual and Triennial IEPs must be held once a year and every three years, respectively. Federal and state laws still require these IEPs to be convened by school districts on time.

**Q7:** *Who can request a distance learning IEP meeting?*

**A:** Anyone can request an IEP meeting for a child but it is ultimately the parent/education rights holder's duty to request a distance learning IEP as it is generally their responsibility to advocate in the child's best interests. For youth living in group homes or Short Term Residential Therapeutic Programs (STRTP), it is still the child's education rights holder's responsibility to request a distance learning IEP meeting. STRTPs retain responsibility for meeting the child's needs, including supporting their education. STRTP staff can request a distance learning IEP for a child. They should also work with the child's education rights holder to make sure their educational needs are being met, including working with the child's social worker and attorney to identify the child's education rights holder.

**Q8:** *Where and to whom should a distance learning IEP request letter be sent?*

**A:** English/Spanish Distance Learning IEP sample letters can be found at: <https://kids-alliance.org/covid-19/>. The letter should be directed to either the special education contact or the school principal or district staff depending on the size of the child's school district: In very large districts, like LAUSD, the letter should be sent to your special education contact at the child's school, such as their special education teacher or case manager. It can also be sent to the child's principal. In smaller districts, there may be district staff attached to the child's IEP program, such as a program specialist, that the letter should be sent to. It could also be sent to the Director of Special Education for the district.

**Q9:** *Do parents/education rights holders have a right to participate in distance learning IEP?*

**A:** Yes, parents/education rights holders have federal and state rights to have meaningful participation in their child's IEP. Further, a child's IEP services cannot be changed without parent/education rights holder consent.

**Q10:** *Can a district threaten to not provide a child with any special education services if the parent/education rights holder does not agree to the services offered by the district in a distance learning IEP?*

**A:** No. A child's last agreed upon IEP remains in effect until the district and parent agree on a new IEP, no matter how old that prior IEP is. In this situation, if a parent/education rights holder does not agree to the services offered in the distance learning IEP, they can: (1) refuse to sign and ask the district to continue to provide the pre-COVID-19 IEP services (parents/education rights holder should undertake this option with caution as districts are likely holding distance learning IEPs because they cannot provide all the services in the child's current IEP): or (2) agree to those services being provided, even if they do not agree that the amount of services is sufficient to meet their child's needs (parents/education rights holder may do this by writing on the IEP: "I consent to these services for implementation purposes only but do not agree that they provide appropriate distance learning services during physical school closures caused by the COVID-19 pandemic.").

**Q11:** *What types of IEP services are appropriate under distance learning protocols?*

**A:** Many types of academic support services (e.g., large group/SDC, small group/RSP, and 1:1 academic support services), speech and language therapy, occupational therapy, and mental health services can be appropriately provided through distance learning methods such as phone calls, video conferencing, and telehealth services delivery options.

**Q12:** *Does my child have a right to 1:1 face-to-face services?*

**A:** The US Department of Education has provided guidance that states that depending on the child's level of need, including severity, and likelihood of regression, some children may require 1:1 face-to-face services during physical school closures. As counties and states begin to modify or lift stay at home or shelter at home orders, it may become more reasonable for children to receive face-to-face services.

**Q13:** *What amount of distance learning services must schools provide now?*

**A:** There is no clear answer to this question as we are in an unprecedented situation. Assuming a typical six-hour school day, which includes many breaks for food, exercise, mental disengagement, and creative activities, children may receive only 4-5 hours of academic and/or social instruction. How many hours of services a special needs child requires to access their education on par with their peers will always be an individual calculation, depending on the child's unique needs.

**Q14:** *What services are appropriate for severely delayed children or children with multiple disabilities?*

**A:** Again, this will always be an individualized calculation. Depending on the type and severity level of a child's disability, the child may require more instruction to ensure significant regression does not occur or may require less instruction due to a fleeting attention span. For children in a full day special day class program, advocates at the Alliance for Children's Rights are considering requesting one hour per day of specialized academic instruction, with additional individualization as needed to meet the needs of the child and the family. This would be in addition to any related services the child might require (e.g., speech and language therapy).

**Q15:** *What services are appropriate for highly mobile children experiencing placement changes during the COVID-19 pandemic?*

**A:** This will always be an individualized calculation. Some things to consider include: (1) has the child's mobility led to worsening academic delays such that academic services are necessary to meet their needs?; and/or (2) has the mobility caused emotional trauma such that mental health support services are necessary to meet the child's needs?

**Q16:** *What services are appropriate for children with behavioral needs during physical school closures caused by the COVID-19 pandemic?*

**A:** This will always be an individualized calculation. Some things to consider include: (1) can the child's needs be met through telehealth or other virtual school based counseling or mental health services?: (2) can parent/caregiver consultation with a district behavior specialist support the child in the home setting (e.g., behavior de-escalation strategies, positive behavior reward charts); and/or (3) are the child's behavioral needs so severe that the child requires 1:1 face-to-face behavioral services in the home, following social distancing and other health guidelines?

**Q17:** *What can I do if my district says they do not have the personnel to provide related services/therapy (e.g., speech and language therapy, school-based counseling) required in the child's IEP or reasonably necessary to meet their distance learning needs?*

**A:** Districts contract with outside agencies called "non-public agencies." You can ask that the district pay a non-public agency to provide those services to the child if a district says they do not have enough staff to provide the services you are requesting.

**Q18:** *Where can I learn about non-public schools and non-public agencies certified by the California Department of Education that provide services to special education children?*

**A:** The California Department of Education has a list searchable by county and school of non-public schools at: <https://www.cde.ca.gov/schooldirectory>. A list of non-public agencies that the child's district contracts with can also be requested from the district.

**Q19:** *Do children have a right to compensatory services later after schools physically reopen if a district is unable to provide all a child's IEP services now?*

**A:** Yes, we believe so, but nothing is guaranteed during this unprecedented time. Typically, if a school district does not provide all of a child's IEP services, a parent/education rights holder has a right to file a complaint to receive compensatory services for those not provided. Federal and state guidance currently provides that children MAY be eligible for compensatory services but does not say how the amount of services will be determined, or the process to determine the amount should a child's IEP team and parent not agree on the amount.

**Q20:** *Does the school district still have to provide compensatory services later if a parent declines IEP services right now?*

**A:** It is unclear. Parents/education rights holders/caregivers may be unable to support learning students and be forced to decline services for multiple reasons including, but not limited to, working, being ill, language access issues, unfamiliarity with technology, or being unable to manage the learning needs of multiple children in the home. We believe students will have a right to compensatory services in this situation, but it is unclear in this unprecedented time.

**Q21:** *How can a caregiver document what compensatory services a child may be entitled to?*

**A:** Caregivers, parents, or education rights holders can document what services a child receives by using the logs found at: <https://kids-alliance.org/covid-19/>. This will help prove what services a child has not received and may be entitled to. Districts should be keeping logs of services provided as well, and parents/education rights holders may be able to rely on these if they are unable to keep their own logs.

**Q22:** *Can a school district "push" a child out of their IEP and into a Section 504 plan solely because the child is currently not in school due to COVID-19 school closures?*

**A:** No. A child's right to an IEP is determined by their disability and how that disability impacts their ability to access their education, not by whether school buildings are physically open or closed.

### **Dispute Resolution**

**Q23:** *What can a parent/education rights holder do if a district is refusing to complete assessments, offer appropriate distance learning IEP services, or providing the require pre-COVID-19 IEP services?*

**A:** Parents/education rights holders can always file a due process administrative hearing in their state. In California, the hearing would be filed with the Office of Administrative Hearings. We recommend that families work with an attorney to bring this type of case. It is possible that bringing this type of case now will be difficult if parents/education rights holders and their attorneys struggle to access records since the five business day records rule was temporarily suspended by SB 117 during school closures caused by COVID-19. Parents/education rights holders can also file a compliance complaint with the California Department of Education, but SB 117 also suspended the right of parents to receive a response to this complaint within 60 days of filing it.

**Q24:** *Can parents/education rights holders be reported to a dependency court if they are not in agreement with the services proposed by the district in a distance learning IEP?*

**A:** This would be a very unusual but possible situation. Currently, the dependency court is only hearing a small number of emergency cases and this type of case would be unlikely to qualify under current requirements. A school district would have to file a motion to join themselves to the dependency case, which is a relatively uncommon occurrence. Then, a judge would have to allow them to join the case and then set a court date to hear from all parties. The parent/education rights holder would have the chance to explain to the court why they did not agree with the district's offered services. The court

could then agree with the parent/education rights holder or, if the court disagreed, could order the parent/education rights holder to agree to the IEP services and/or remove the parent/education rights holder's education rights and appoint someone else to make education decisions for the child.

### **Special Education Waivers**

**Q25:** *Are there special education waivers in California?*

**A:** Yes, SB 117 waived three important special education timelines: (1) the right to school records within five business days of a request; (2) the right to receive a written response to an assessment request within 15 calendar days; and (3) the right to receive a response to a Compliance Complaint filed with the California Department of Education within 60 days of filing the complaint. These timeline waivers are only in effect until schools resume normal operations.

**Q26:** *What special education timelines are not waived during physical school closures?*

**A:** A parent/education rights holder and child still have the following rights: (1) to request an IEP and have it held within 30 calendar days; (2) Annual IEPs must be held once a year; (3) assessments required by a signed assessment plan must be completed within 60 days; (4) triennial assessments and IEPs must be completed every three years; and (5) if a child changes school districts, an IEP must be held within 30 days of the transfer to discuss IEP services in the new district.

### **Placement Changes**

**Q27:** *My child just changed home placements, what happens now?*

**A:** A child's general education rights are still in effect. This means that the child has a right to remain in their school of origin, receiving services from their prior school district, even if they have moved home placements. We encourage parents/education rights holders to keep a child enrolled in their prior school, receiving distance learning services as they were before the move. A parent/education rights holder can also choose to immediately enroll the child in their new school/district. To do this, contact the child's new school and district to determine appropriate enrollment processes. If a school/district is not following a child's school of origin or immediate enrollment rights, please contact the Alliance for Children's Rights at 213-368-6010 for assistance in enforcing these rights for children in the Los Angeles County Dependency or Delinquency System.

### **Group Home/STRTP Responsibilities**

**Q28:** *What is the responsibility of group home/STRTP staff for engaging in/supporting a youth's education?*

**A:** A group home/STRTP is responsible for the child's well-being including supporting their education. This means they must have sufficient adults on staff to fulfill support and supervision duties for a child to access the distance learning services offered by their school. They must also provide sufficient access to technology, including accepting responsibility for school provided devices or providing appropriate access to their own technology, for children to access all their distance learning services. Staff should also be aware of potential privacy needs of students who are receiving services such as social-emotional therapy virtually.

### **Technology/Connectivity**

**Q29:** *What is a district's responsibility to provide access to technology such as a laptop or Chromebook and internet connectivity?*

**A:** Most districts are providing technology and connectivity to their students to help them access their district learning services. They are receiving assistance from parents, teachers, businesses and philanthropy in order to do this. Monetary contributions will be deposited in a fund established at the

CDE Foundation and used to bulk-purchase computing and hotspot devices for allocation to school districts in need, with a priority on rural and low-income communities.

The California Department of Education lists information on internet access at:

<https://www.cde.ca.gov/ls/he/hn/availableinternetplans.asp>. In addition, California Public Utilities Commission (CPUC) will make \$25 million available from the California Teleconnect Fund for hotspots and Internet service for student households. School districts will be able to apply to receive 50 percent discounts on the cost of hotspot devices and on monthly recurring service charges until September 30, 2020.

### ***Need Assistance?***

**Q30:** *What can I do if I still need help?*

**A:** If you need assistance, contact an attorney or advocate in your area. Contact the Alliance for Children's Rights for assistance at 213-368-6010 if you are working with a child in the Los Angeles County Dependency or Delinquency System.